

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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WANDA R. CLEMONS,

Plaintiff,

v.

CAROLYN W. COLVIN,

Defendant.

Case No. 2:15-cv-00389-APG-VCF

**ORDER GRANTING MOTION FOR
ATTORNEY'S FEES**

(ECF No. 28)


Plaintiff Wanda R. Clemons' attorney moves for an award of attorney's fees following Clemons' successful motion for a remand for further proceedings. Clemons' attorneys present evidence that two lawyers expended 24.7 hours and two paralegals expended 2.6 hours on Clemons' case before this court. ECF No. 28-1. Counsel requests a total of \$5,039.98. The defendant did not oppose the motion.

A court generally may not award costs or attorney's fees against the United States absent a statute directly authorizing such an award. *United States v. Chem. Found.*, 272 U.S. 1, 20 (1926). The EAJA is a partial waiver of the United States' sovereign immunity authorizing a court to award costs and attorney's fees against the United States in certain circumstances. *W. Watersheds Project v. Interior Bd. of Land Appeals*, 624 F.3d 983, 985 (9th Cir. 2010). Specifically, 28 U.S.C. § 2412(d)(1)(A) authorizes an award of attorney's fees to a "prevailing party other than the United States . . . unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust." A position is substantially justified if it has a "reasonable basis in law and fact." *Ratnam v. INS*, 177 F.3d 742, 743 (9th Cir. 1999) (quotation omitted). The United States bears the burden of showing its position was substantially justified. *Id.* Whether to award fees under the EAJA, including the determination of whether the United States' position was substantially justified, lies within the court's discretion. *Gutierrez v. Barnhart*, 274 F.3d 1255, 1258 (9th Cir. 2001).

1 Clemons is a prevailing party because she obtained a remand for further proceedings after
2 a finding that the ALJ erred. *See Shalala v. Schaefer*, 509 U.S. 292, 302 (1993); *Akopyan v.*
3 *Barnhart*, 296 F.3d 852, 854 (9th Cir. 2002). The United States has not responded to this motion
4 so it has not met its burden of showing its position was substantially justified. The requested fees
5 are reasonable. I therefore grant the motion.

6 IT IS THEREFORE ORDERED that the motion for attorney's fees (**ECF No. 28**) is
7 **GRANTED**. Plaintiff Wanda R. Clemons' attorneys, Rohlfing & Kalagian, LLP,¹ are awarded
8 attorney's fees pursuant to 28 U.S.C. § 2142(d)(1)(A) in the amount of \$5,039.98. The clerk of
9 court shall enter judgment accordingly.

10 DATED this 3rd day of April, 2017.

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13 ANDREW P. GORDON
14 UNITED STATES DISTRICT JUDGE
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27 ¹ Plaintiff Wanda R. Clemons assigned her rights under the EAJA to her attorneys with the
28 understanding that they will credit her bills for any recovery. ECF No. 28-3.